IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. : 249/2006

Date of Decision: : 23.4.2007

Jiya Lal …Petitioner.

-versus-

State of H.P. & others. …Respondents.

Coram:

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting?*

For the Petitioner. : Mr. Vivek Thakur, Advocate.

For the Respondents :Mr. M.S. Chandel, Advocate General with
Mr. M.A. Khan and Ms. Meenakashi Sharma, Dy. AG
For the respondent No.6:Mr. Ajay Kumar, Advocate.

Rajiv Sharma, J. (oral):

The present petition is directed against the order dated 19th December, 2005 passed by Principal Secretary (PR) to the Government of Himachal Pradesh.

The brief facts necessary for the adjudication of this petition are that the petitioner has approached this Court by way of CWP bearing No.473 of 2005. The writ petition was disposed of by this court on 10.11.2005 by setting aside order dated 6.4.2005 and the matter was remitted to the competent authority toi pass fresh reasoned and speaking order after taking into consideration the reply submitted by the petitioner along with other relevant material. The petitioner was also permitted to be heard in person. It was also directed that in case the

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* *Whether the reporters of the Local Newspapers may be allowed to see the Judgment?*

petitioner seeks personal hearing in the matter, the competent authority shall allow him such hearing.

In sequel to judgment dated 10.11.2005, the petitioner was informed on 22nd November, 2005 by the Joint Secretary (PR) to the Government of Himachal Pradesh that the petitioner should appear before the Principal Secretary (PR) to the Government of H.P. in her office-chambers on 30th November, 2005 at 3.00 P.M. The petitioner informed the Principal Secretary (PR) vide Annexure P-29 that due to his illness, next hearing be fixed on any day after 24th December, 2005. The petitioner has also faxed the copies of his discharge slip to the competent authority.

I have perused the record and heard the parties.

I am of the view that competent authority without affording effective hearing to the petitioner has passed the impugned order on 19th December, 2005. The petitioner has informed the Principal Secretary (PR) by way of Annexure P-29 that due to his illness, the matter be fixed on any day after 24th December, 2005. The petitioner has also faxed the copies of the discharge slip. The Principal Secretary (PR) despite the specific request made by the petitioner to adjourn the matter has passed the final order on 19th December, 2005. The order passed by the Principal Secretary (PR) has been passed in utter haste. Once the request has been made by the petitioner to adjourn the matter due to his illness, the same was to be acceded to by the competent authority. Though it has come in the order dated 19th December, 2005 that the matter was adjourned from 13th November, 2005 to 16th December, 2005, but it is also stated in the order dated 19th December, 2005 that on 16th December, 2005 itself a fax message was sent by the petitioner for another date.

The reasons and observations made by the competent authority in the order dated 19th December, 2005 leading to exparte order against the petitioner

are erroneous. The Principal Secretary (PR) has failed to exercise the jurisdiction vested in him. The competent authority while deciding such like matters must always bear in mind that the procedural law is as important as substantive law. The petitioner has definitely been prejudiced by the exparte order dated 19th December, 2005. There was no occasion for the petitioner to intentionally avoid the proceedings since the same had civil consequences. It was only due to the reasons beyond the control of the petitioner that he could not participate during the course of hearing. The orders of the authorities under Panchayati Raj Act determining the rights of the parties more particularly of the elected representative are to be passed after due application of mind taking into consideration the material adduced during the course of inquiry.

Malafides have been attributed by the petitioner against respondent No.6 but the same have remained unsubstantial.

Thus, I am of the firm view that the petitioner was required to be heard during the course of proceedings and exparte order could not be passed against him. Resultantly, the writ petition is allowed. Order dated 19th December, 2005 is quashed and set aside. The matter is remitted to the Principal Secretary (PR) to decide the same afresh after hearing the petitioner. To void the delay, parties are directed to make themselves available before the Principal Secretary (PR), Government of H.P. on 14.5.2007

(Rajiv Sharma), Judge.

April 23, 2007
Awasthi